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*Attorneys for Plaintiff, Kenneth Sciacca,
Individually and on Behalf of Himself and
All Others Similarly Situated*

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

KENNETH SCIACCA, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

APPLE, INC.,

Defendant.

CASE NUMBER: 5:18-cv-3312

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, Kenneth Sciacca (“Sciacca” or “Plaintiff”), by and through his undersigned counsel, brings this action, on behalf of himself and all other persons similarly situated, against Defendant, Apple, Inc. (“Apple” or “Defendant”), and alleges as follows:

NATURE OF ACTION

1. Plaintiff brings this action individually and on behalf of the proposed class (the “Class”), as more fully defined below, for the benefit and protection of all current and former owners of the First Generation (“Series 0”), Second Generation (“Series 1” and “Series 2”), and Third Generation (“Series 3”) models of the Apple Watch (“Watch” or “Watches”) purchased in

1 the United States. Plaintiff brings this class action on behalf of himself and all other similarly
2 situated persons to obtain damages, restitution, as well as injunctive and other relief.

3 2. Apple started selling the Watches in April 2015, when it introduced its Series 0
4 Watches to consumers. Since April 2015, Defendant has released two additional “generations” of
5 the Apple Watch: the Series 1 and Series 2 Watches; and the Series 3 Watch.

6 3. The Watches all contain the same defect and/or flaw, which causes the screens on
7 the Watches to crack, shatter, or detach from the body of the Watch (the “Defect”), through no
8 fault of the wearer, oftentimes only days or weeks after purchase.

9 4. Apple knew that the Watches were defective at or before the time it began selling
10 them to the public. Furthermore, consumers complained to Apple about the Defect almost
11 immediately after Apple released the Series 0, Series 1, Series 2, and Series 3 Watches.

12 5. Shortly after the release of the Series 0 Watch in April 2015, consumers began to
13 complain that the screens on their Watches were spontaneously detaching from the body of their
14 Watches. Apple has persistently denied any widespread issue with Series 0 Watches, but in April
15 2017, Apple acknowledged a swelling battery defect in certain Series 0 Watches and extended its
16 Limited Warranty for qualifying Series 0 Watches from one year to three years.

17 6. Apple began to sell its Series 1 and Series 2 Watches in September 2016. Shortly
18 thereafter, consumers who purchased the Series 1 and Series 2 Watches complained that the
19 screens on their Series 1 and Series 2 Watches had cracked, shattered, or completely detached
20 from the body of their Watches. Like their Series 0 brethren, these consumers took their defective
21 Watches to Apple Stores, contacted Apple Support, and posted their complaints on the
22 “Communities” forum on apple.com.

23 7. Apple has persistently denied any widespread issue with Series 1 or Series 2
24 Watches, but, upon information and belief, in April 2018, Apple acknowledged a swelling battery
25 defect in certain Series 2 Watches and extended its Limited Warranty for qualifying Series 0
26 Watches from one year to three years.

1 8. Apple started selling its Series 3 Watch in September 2017. Shortly thereafter,
2 consumers who purchased the Series 3 Watch reported that the screens on their Watches were
3 cracking, shattering, or detaching from the body of their Watches, and lodged their complaints
4 with Apple in the manners described above.

5 9. Since 2015, Apple has sold millions of Watches with the Defect throughout the
6 United States, and either knew, or should have known, that the Watches contain the Defect and
7 are not fit for their intended purpose. Nonetheless, Apple has actively concealed and failed to
8 disclose the Defect to Plaintiff and Class members prior to, at, or after the time of purchase.

9 10. Further, Apple's conduct, when confronted with the Defect, indicates that its
10 internal policy is to deny the existence of the Defect, claim the Defect is the result of "accidental
11 damage" caused by consumers, and then refuse to honor its Limited Warranty on those grounds.
12 Without Limited Warranty coverage, consumers are forced to incur the significant expense of
13 repairing or replacing their defective Watches.

14 11. Apple knew that purchasers of the Watches would reasonably expect the screens
15 to function in a predictable and expected manner during normal use, and Plaintiff and other
16 consumers have precisely that expectation. Also, Apple knew that purchasers of the Watches
17 would reasonably expect the Defect—when it manifested itself—to be covered under its Limited
18 Warranty, and again, Plaintiff and other consumers did have that expectation.

19 12. Had Plaintiff and other Class members known about the Defect at the time of
20 purchase, they would not have bought the Watches, or would have paid less for them.

21 13. As a result of the Defect in the Watches and monetary costs associated with repair,
22 replacement, or lost use of the Watches, Plaintiff and Class members have suffered injury in fact,
23 incurred damages, and have otherwise been harmed by Apple's conduct.

24 14. This action is brought to remedy violations of state consumer protection statutes
25 in connection with Apple's misconduct, including its conscious effort to conceal material facts
26 concerning the Defect during the distribution, marketing, sale and advertisement of the Watches,
27 as well the consumer and warranty services performed with respect to the Watches.

1 22. This action is brought against Apple on behalf of Plaintiff and all current and
2 former owners of the Watches.

3 23. Apple designed, manufactured, distributed, marketed, warranted, and sold the
4 Watches. Upon information and belief, Apple has sold—directly or indirectly through authorized
5 stores and other retail outlets—millions of Watches in California and nationwide.

6 **Watches Manufactured, Advertised, and Sold by Apple**

7 24. Apple began selling its Watches in April 2015, when it introduced the Series 0
8 Watch. Apple exclusively manufactured and sold Series 0 Watches from April 2015 until
9 September 2016, when Apple discontinued their manufacture. Upon information and belief,
10 consumers of the Series 0 Watch could choose between a number of models varying in price when
11 purchasing their Watch: The Watch, Sport, Edition, or Hermès. Depending on the model, Series
12 0 Watches had steel, aluminum, or gold cases, and “Ion-X glass” or “Sapphire crystal” screens.
13 Consumers could further select between a smaller, 38mm case, or a larger 42mm case. Prices for
14 Series 0 Watches ranged from \$349 to \$1,099, depending on the model and other above-described
15 features.

16 25. Starting in September 2016, Apple discontinued the manufacture of its Series 0
17 Watches and began to produce and sell both the Series 1 and Series 2 Watches. Apple still sells
18 the Series 1 Watch, but discontinued manufacture of the Series 2 Watch in September 2017.

19 26. The Series 1 Watches only use aluminum cases with “Ion-X glass” screens, but
20 consumers can choose a 38mm case or a 42mm case. Initially, prices for Series 1 watches varied
21 between \$269 and \$299—depending on the size chosen—but have since dropped to \$249 and
22 \$279.

23 27. Upon information and belief, purchasers of the Series 2 Watch could choose
24 Aluminum, Stainless Steel, Edition, Hermès, or Nike+ models, with either a 38mm or 42mm case.
25 Depending on the model, Series 2 Watches had aluminum, ceramic, or stainless-steel cases, and
26 either Ion-X glass or Sapphire crystal screens. Again, dependent on the model selected, prices for
27 the Series 2 watch ranged from \$269 to \$1,249.

1 28. In September 2017, Apple released the Series 3 Watch, which, along with the
2 Series 1 Watch, are the only Apple Watches produced and sold by Apple at this time. There are
3 several models of the Series 3: (GPS + Cellular) Stainless Steel, (GPS + Cellular) Aluminum,
4 Edition, Hermès, Nike + (GPS + Cellular), Aluminum (GPS), and Nike + (GPS). Depending on
5 the model, Series 3 Watches have aluminum, ceramic, or stainless-steel cases, and either Ion-X
6 glass or Sapphire crystal screens. Consumers can select between a 38mm or 42mm case.
7 Depending on the model, prices for the Series 3 vary between \$329 and \$1,399.

8 29. From their inception, Apple has advertised the Watches as “smart watches,” with
9 functions well beyond simply telling the time. Consumers can download apps, receive text
10 messages, track their location, and—depending on the model—receive phone calls.¹

11 30. More importantly, however, Apple has consistently marketed the Watches as
12 activity-oriented devices that consumers can take anywhere and use for any practical purpose.
13 Advertisements for the Series 1 watch on Apple’s website invite consumers to: “Track your
14 activity. Measure your workouts. Monitor your health.” Consumers are encouraged to “[p]ick
15 from a variety of indoor and outdoor workouts—from cycling and running to high-intensity
16 interval training and rowing—then tap and go. Every movement is accurately measured.”²

17 31. Similarly, Apple advertised its Series 2 watch as a waterproof device capable of
18 withstanding depths of up to 50 meters, as well as a device “[p]acked with incredible fitness and
19 health capabilities.”³ Likewise, the Series 3 is advertised as the “Ultimate Sports Watch” that can
20 track indoor and outdoor activities and is also water resistant up to 50 meters.⁴

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24 ¹ <https://www.apple.com/watch/>.

25 ² <https://www.apple.com/apple-watch-series-1/>.

26 ³ <https://www.apple.com/newsroom/2016/09/apple-introduces-apple-watch-series-2/>.

27 ⁴ <https://www.apple.com/apple-watch-series-3/>.

32. Advertising campaigns for Series 0, Series 1, Series 2, and Series 3 Watches have and continue to show Apple Watch-wearers participating in a variety of activities from running, hiking, and climbing, to dancing, swimming, and surfing.⁵

33. Based on these advertisements and the high purchase price for Apple Watches, reasonable consumers who purchase Apple Watches expect well-made, durable devices that can consistently perform a number of functions and withstand a variety of conditions without issue.

The Limited Warranty for Apple Watches

34. Apple provides a Limited Warranty for all purchasers of an Apple Watch, which covers the “product against manufacturing defects beginning on the original purchase date.” The Limited Warranty is one year for most models but is two years for the Hermès and Edition models.⁶

35. Upon information and belief, apart from distinctions in length, the terms of Apple’s Limited Warranty are the same for all Apple Watch models and, in relevant part, provides:

“WHAT IS COVERED BY THIS WARRANTY?”

Apple Inc. of One Infinite Loop, Cupertino, California, U.S.A. 95014 (“Apple”) warrants the Apple-branded hardware product and Apple-branded accessories contained in the original packaging (“Apple Product”) against defects in materials and workmanship when used normally in accordance with Apple’s published guidelines for a period of ONE (1) YEAR from the date of original retail purchase by the end-user purchaser (“Warranty Period”). Apple’s published guidelines include but are not limited to information contained in technical specifications, user manuals and service communications.

WHAT IS NOT COVERED BY THIS WARRANTY?

This Warranty does not apply to any non-Apple branded hardware products or any software, even if packaged or sold with Apple hardware. This does not affect your rights under applicable consumer law. Manufacturers, suppliers, or publishers, other than Apple, may provide their own warranties to you – please contact them for further information. Software distributed by Apple with or without the Apple brand (including, but not limited to system software) is not covered by this Warranty. Please refer to the licensing

⁵ <https://www.youtube.com/watch?v=1b6W3ltMRN0>; <https://www.youtube.com/watch?v=kXySS9j4Ryg>; <https://www.apple.com/watch/films/>.

⁶ <https://support.apple.com/watch/repair/service>.

1 agreement accompanying the software for details of your rights with respect to its use.
2 Apple does not warrant that the operation of the Apple Product will be uninterrupted or
3 error-free. Apple is not responsible for damage arising from failure to follow instructions
4 relating to the Apple Product's use.

5 **This Warranty does not apply: (a) to consumable parts, such as batteries or**
6 **protective coatings that are designed to diminish over time, unless failure has**
7 **occurred due to a defect in materials or workmanship; (b) to cosmetic damage,**
8 **including but not limited to scratches, dents and broken plastic on ports unless**
9 **failure has occurred due to a defect in materials or workmanship; (c) to damage**
10 **caused by use with a third party component or product that does not meet the Apple**
11 **Product's specifications (Apple Product specifications are available at**
12 **www.apple.com under the technical specifications for each product and also**
13 **available in stores); (d) to damage caused by accident, abuse, misuse, fire,**
14 **earthquake or other external cause; (e) to damage caused by operating the Apple**
15 **Product outside Apple's published guidelines; (f) to damage caused by service**
16 **(including upgrades and expansions) performed by anyone who is not a**
17 **representative of Apple or an Apple Authorized Service Provider ("AASP"); (g) to**
18 **an Apple Product that has been modified to alter functionality or capability without**
19 **the written permission of Apple; (h) to defects caused by normal wear and tear or**
20 **otherwise due to the normal aging of the Apple Product, (i) if any serial number has**
21 **been removed or defaced from the Apple Product, or (j) if Apple receives**
22 **information from relevant public authorities that the product has been stolen or if**
23 **you are unable to deactivate passcode-enabled or other security measures designed**
24 **to prevent unauthorized access to the Apple Product, and you cannot prove in any**
25 **way that you are the authorized user of the product (eg. by presenting proof of**
26 **purchase)."**⁷

27 36. Apple's website indicates that an Apple Watch is considered "out of warranty"
28 when it is: (1) "beyond the eligible warranty term"; (2) "has an issue that's not covered under
warranty or consumer law, such as accidental damage"; or (3) "service isn't covered by an
AppleCare plan."⁸

37. If an Apple Watch battery "has a manufacturing defect and it's covered by the
Apple Limited Warranty, AppleCare+, or consumer law," Apple will service the watch "at no
additional cost."⁹

⁷ <https://www.apple.com/legal/warranty/products/warranty-us.html> (emphasis in original).

⁸ <https://support.apple.com/watch/repair/service>.

⁹ *Id.*

1 38. If an Apple Watch screen “breaks accidentally, [consumers] can replace [the]
2 Apple Watch for an out-of-warranty fee.” Purportedly, a “manufacturing defect” is covered “by
3 the Apple warranty and consumer law.”¹⁰

4 **The Defect in Series 0, Series 1, Series 2, and Series 3 Watches**

5 39. Shortly after the release of the Series 0 Watch, consumers began to complain that
6 the screens on their Series 0 Watches were “popping off,” “falling off,” or otherwise detaching
7 from the body of the Watch. In all instances, consumers clarified that these occurrences were not
8 the result of damage or misuse on their part, noting the Defect manifested itself suddenly and
9 unexpectedly.

10 40. In April 2017, Apple extended its Limited Warranty from one year to three years
11 for Series 0 Watches with swollen batteries, and again in July 2017 for Series 0 Watches with
12 detached back covers. Upon information and belief, Series 0 Watch owners could have their
13 defective Watches repaired or replaced for free, provided Apple determined the Series 0 Watch
14 contained a defective battery. Apple did not admit a general defect in Series 0 Watches and has
15 refused to extend the Limited Warranty to defective Watches that it believes do not contain a
16 swollen battery.

17 41. Shortly after the release of the Series 1 and Series 2 Watches in September 2016,
18 consumers began to report that the screens were detaching from the body of their watches.
19 Purchasers of the Series 1 and Series 2 Watches have also reported the appearance of hairline
20 cracks running vertically and horizontally along the perimeter of their Watch screens, while others
21 have reported that their screens shattered. In all instances, consumers clarified that these
22 occurrences were not the result of damage or misuse on their part, noting the Defect manifested
23 itself suddenly and unexpectedly.

24 42. Upon information and belief, in April 2018, Apple extended its Limited Warranty
25 from one year to three years for all 42mm-sized Series 2 Models with swollen batteries. Apple
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¹⁰ *Id.*

1 did not admit a general defect in Series 2 Watches and has refused to extend the Limited Warranty
2 to defective Watches that it believes do not contain a swollen battery.

3 43. Shortly after the release of the Series 3 Watch, consumers began to report that the
4 screens of their Watches were detaching, cracking, or shattering. In all instances, consumers
5 clarified that these occurrences were not the result of damage or misuse on their part, noting the
6 Defect manifested itself suddenly and unexpectedly.

7 44. Upon information and belief, the Defect described above is present in every series,
8 model, and size of the Watches.

9
10 **Experiences of Plaintiff and the Class**

11 45. Sciacca purchased a Series 2 Stainless Steel 38mm Apple Watch on or about
12 December 1, 2016. On or around March 9, 2018, the screen on Sciacca's Watch unexpectedly
13 detached from the Watch's body shortly after he removed the watch from its charger (shown
14 below). In the following weeks, Sciacca contacted a certified Apple Store located at the Park
15 Meadows mall in Lone Tree, Colorado. Store employees examined Sciacca's Watch and verified
16 the issue, but determined that the Watch's screen detached because of "non-warrantable damage,"
17 rather than a swollen battery. Because the employees determined Sciacca's Watch was not
18 covered under Apple's Limited Warranty, they quoted him \$249 to repair his Watch. Sciacca
19 declined this offer.



1 46. At all pertinent times, Sciacca maintained his Watch as recommended by Apple.
 2 Sciacca's Watch was in like-new condition, with no scratches on the screen or damage to the
 3 body.

4 47. Sciacca's experience is identical to the experiences of thousands of Apple Watch
 5 owners. The Internet—especially Apple's "Communities" forum—is replete with complaints
 6 about the Defect and Apple's persistent refusal to cover the Defect under its Limited Warranty.
 7 Apple's response in each case is the same: it implicitly or expressly blames the consumer for the
 8 Defect and refuses to cover repairs under the Limited Warranty or otherwise. The quotes below
 9 from Apple's "Communities" forum are representative of consumers' experiences:

- 10 • hackrill, posted August 18, 2016:

11 My iWatch face fell out and i cannot access the password.

- 12 • Mariep999, posted August 19, 2016:

13 I had the same issue last night. I was doing an exercise class and had my watch on then I
 14 heard a clicking noise. I looked and the watch face had popped out and was hanging by a
 15 cable. I wasn't doing anything strenuous at that point. I had worn my watch exercising
 16 numerous times and it's been fine. What would cause watch face to pop out? I've had my
 17 watch for over a year so it will be out of warranty. I've no other issues with it apart from
 18 this. I look after my watch and I've never had it wet.

- 19 • mercadoj, posted August 16, 2017:

20 I purchased my Apple Watch (stainless steel) in June of 2015. Being a near \$800 Watch,
 21 saying it's been well cared for is an understatement. The Watch has ... no scratches or
 22 dents, never been dropped, or exposed to water. While working at my desk at work I
 23 noticed the screen dangling from the Watch housing. I took the Watch to a local Apple
 24 Store, and they sent it to Apple for further review. After a couple of days they called and
 25 refused to fix the Watch because they claimed the screen fell off because of "accidental
 26 damage" and the device was "out of warranty."

- 27 • Mightymackem, posted May 14, 2017:

28 My series 2 has just done the exact same thing! Only had it a month and a half. I'm armed
 forces so I use it for running etc as it's designed for...fine one minute, next it's decided
 to be a jack in the box and is hanging by the ribbon. Cracked all around the face.

- Ankush Narula, posted September 17, 2017:

1 I have the same issue with my first generation (stainless steel) Apple Watch. One day the
2 screen just popped off while I was walking and now it hangs by the ribbon cable. I can
press the screen and the body together but the screen doesn't remain attached.

3 I took it to the Apple Store this past Friday and the Genius Bar confirmed that there is no
4 physical damage. However, they told me that my AppleCare warranty is expired and my
5 device is not covered. I mentioned that I've read Apple has extended the warranty for first
6 generation Apple Watch to 3 years. They said the extended warranty only applies to the
Apple Watch Sport – not to the Apple Watch or Apple Watch Edition. Out of warranty
repair cost is \$249.

7 Very disappointing for a \$700 device for someone who over 20 years has spent tens of
8 thousands on Apple products and thousands on AppleCare.

9 • snetmail, posted October 14, 2017:

10 This is exactly the same situation I had. I was sitting at my desk at work and noticed that
11 the screen was suddenly detached. I have only had my watch (Nike version - 2nd
12 generation I think - 38mm) for 4 months and I have never gotten it wet or dropped it. I
13 was shocked when Apple sent it for repair and I was told it was found to have been
14 accidentally damaged. There are not even any scratches on it. I would think there could
15 be accidental damage in simply shipping a product with out a connected screen if that is
the case. I don't typically buy Apple care because I am careful with my devices and the
16 devices are usually of good quality hardware-wise. I am shocked and upset about this. It
may be the end of my relationship with Apple products. This is unacceptable.

16 • GYan1, posted August 3, 2017:

17 Watching TV and POP! Screen shattered on a 5 month old watch. I went to my Genius
18 Bar appointment today and they said it had to be my fault and not covered. \$229 to fix. I
19 am VERY disappointed and will be contacting corporate, and if no resolution perhaps the
news media.

20 • markfromkaiser, posted October 14, 2017:

21 My wife had this same problem. No abuse, didn't drop, didn't hit, nothing. She was sitting
22 at a table having lunch with her fellow coworkers and they heard something shatter. They
23 were looking for a lightbulb, but all the lights were OK. She looked down at her watch
24 and the screen had completely shattered with shards on the table. Thankfully they were
25 all done eating. Spent four sessions on chat trying to resolve the issue and it would time
26 out before being resolved. Finally called and talked to a senior advisor. They sent a box
27 and shipped it to apple. They said it was damaged/abused. IT WAS NOT. This watch is
only four months old. Got it for mothers day. At this point, not real happy with Apple. I
have 3 iPhones, a MacBook pro, and have hawked apple products to friends and family,
most of which have purchased and been happy. It is good to see we are not alone with this
issue.

28 Posted October 22, 2017:

1 Well, bad news for us. So far anyway. Got on chat with yet another advisor and they were
2 all but convinced it was a swollen battery. Sent pics and everything. Then they get with a
3 senior advisor. Since it had already been looked at by some technician, they said they
4 would not replace it. So, basically, they are calling us liars in that we said there was no
5 abuse or damage to the watch. They said it was damaged.

6 It also seems they don't have a clear policy on when these watches do shatter. Some get a
7 new watch, others don't. Good luck! The watch cost \$350. Now they want \$229 or
8 something to send a refurbished watch. That's about \$580 for a four month old watch.
9 Incredible. IF she had abused or damaged it, then yeah, have to suck it up and either pitch
10 it or get it repaired. But she didn't. Thinking I'm tasting sour apple.

11 • Thony0415, posted December 13, 2017:

12 Same thing happened with my apple watch series1. I was just standing in the garden on a
13 sunny day then suddenly I felt something has popped from my wrist. Then I realised the
14 screen is shattered. I called up the apple centre and they keep on telling me they have no
15 similar cases from the past and make it appear that it might have been caused by accident.
16 Now I can see that Im not alone. Apple should just gracefully admit that something is
17 terribly wrong with the product than make us all appear liars!

18 • traceyhincks, posted January 3, 2018:

19 My series 3 watch screen cracked right around the edge and the face popped out...I was
20 sitting at my desk, not moving didn't bang it on anything...I'd had the watch for one
21 week...My husband contacted apple, they said send it to the repairer, we are not close to
22 an Apple Store...So end result from Apple is that it was my fault and it's going to cost
23 \$385 to fix it...After spending \$600 to buy it, and me wearing it for a week, it's turning
24 into a very expensive watch...They have flatly refused to warrant it....

25 • THHV, posted March 28, 2018:

26 My watch was fine the night before but after charging it for the night, when I put it back
27 on there was a continuous hairline crack that wrapped around 2 sides of the screen on the
28 bevel. I'm positive that it happened when charging/ off the wrist as its very noticeable when
swiping on the screen. My finger picks up the scratch when sliding my finger over it. I
noticed it the second I put the watch on. Apple Store advised that it was covered under
warranty as it was likely related to a swollen battery or other factory defect. They sent it
for repair under warranty but the repair facility wants over \$250 to fix the screen because
it is cracked & considered physical damage... THIS IS WHY I SENT IT IN. Obviously
it's cracked, the Apple Store saw this, verified it and advised it was covered under
warranty. There are zero signs of wear and tear. No case damage, scratched, etc.

• JHi47644, posted March 13, 2018:

1 My wife had the same problem on the series 2 watch. Sat in the car, went to check her
 2 watch and noticed it had cracked around all 4 edges and just hanging off from the top.
 3 Logged a support call and sent them photos and the watch to be told I need to pay for it to
 4 be repaired because they found another crack coming from one of the cracks on the edge
 5 down to the case.....I've tried 3 time for them to accept that we have not dropped it and I
 6 can't see a crack in the original photos but they won't accept it.

7 My point to them was that given its my word against theirs, if it had been knocked on the
 8 inside edge of the watch without her knowing (some how) why would it radiate all the
 9 way around the screen and what type of force would that take, its supposed to be a sports
 10 watch! Looks like I'm left paying to get the watch replaced but I won't go near Apple
 11 again, after being a customer for many, many years. They have no complaints procedure
 12 and no way to escalate.

13 • njsurfmaster, posted March 15, 2018:

14 I have the same problem with my Series 3 watch. I purchased it in September 2017. The
 15 screen around the entire edge cracked and separated. It happened while sitting in a chair
 16 watching TV. I didn't bang it in any way. No visible scratches or any kind of damage on
 17 the watch...I took it to an Apple Store and they said it looked like a swollen battery and
 18 wrote it up that way. Apple denied it and is charging me \$289+tax to repair...There is no
 19 doubt in my mind there is a problem with these watches.

20 • bryanpet, posted May 9, 2018:

21 Similar thing happened to my son's apple watch that he got for his birthday after just 2
 22 days from purchase last week. My son was literally plugging his iPhone into the charger
 23 by the stove when the screen popped and cracked on the watch! I was in the kitchen right
 24 next to him when it happened. However, Apple Store technicians and manager insisted it
 25 was caused by impact based on their forensic analysis, which means we have to sink more
 26 money into the product to repair it. In addition, they flat out called me a liar in front of my
 27 son. As a long time customer I am truly disappointed in Apple's stance for a product that
 28 is clearly flawed and of poor quality based on my own experience as well as thousands of
 complaints/posts. Shame on Apple.

• Mandiekbc, posted May 14, 2018:

Same happened to mine, I was wearing it and checked the time only to notice a hairline
 crack around the outside of the watch from the crown to the bottom left I wear the watch
 on my left arm, no way I have knocked it. I was told to take it into apple! they looked at
 it and said it was an impact by the crown that has caused the crack all around to the bottom!
 no way could this of happened. very disappointed in Apple. these watches are not fit for
 purpose! my watch is 3 months old!¹¹

¹¹ https://discussions.apple.com/community/watch/apple_watch_hardware?page=1.

48. As the above posts demonstrate, owners of defective Apple Watches are faced with unenviable—and expensive—options: They can pay over \$200 to repair an already expensive Watch; they can purchase AppleCare+ for at least \$49 (and then pay an additional \$69 service fee for each incident);¹² they can purchase a new Apple Watch; or they can simply not use their Watch. Under any option, consumers must either pay more for the continued use of an already expensive Watch or be deprived of its use entirely.

49. The pervasiveness of the Defect is such that owners of Apple Watches with detached screens may purchase, from online vendors, adhesives designed and marketed specifically to reattach Apple Watch screens.¹³

Apple's Knowledge of the Defect

50. Although Apple has acknowledged a swollen battery issue in certain Series 0 and Series 2 Watches, it has flatly refused to acknowledge the existence of the Defect, even though the Defect is present in every series of Watches. Nevertheless, consumers' complaints at Apple Stores, to Apple Support, and online leave no doubt that Apple is fully aware of the Defect. Even still, Apple has provided no notice to consumers.

51. Apple has failed to disclose the Defect to consumers, and, when presented with defective Watches, has insisted that the damage caused by the Defect is the fault of consumers and refused repair or replace their Watches free of charge, as required under the Limited Warranty. These are material facts about which consumers would reasonably expect to receive notice. Had Plaintiff and Class members known about the Defect and, further, that Apple would refuse to remedy the Defect under its Limited Warranty, they would not have bought the Watches, or would have paid less to purchase them.

52. Although aware of the Defect in the Watches, Apple has actively concealed the Defect from Plaintiff and the Class at the time of purchase and every point thereafter. Specifically, Apple has engaged in the following acts and omissions:

¹² <https://www.apple.com/shop/product/S5398LL/A/applecure-for-apple-watch-and-apple-watch-nike>.

¹³ <https://www.amazon.com/Front-Sticker-Apple-Waterproof-Adhesive/dp/B01LQ34KGE>;
<https://www.ifixit.com/Guide/Apple+Watch+Adhesive+Replacement/41083>.

- a. failed to disclose, at and after the time of purchase and attempts to repair, any and all known material facts or material defects associated with the Watches, including the associated repair costs, as well as the Defect in the Watches that exists during their normal and/or expected range of operation;
- b. failed to disclose at the time of purchase that the Watches were not in good working order, were defective, and were not fit for their intended purposes; and
- c. failed to disclose or actively concealed the fact that the Watches were and are defective, despite the fact that Apple learned of such defects through testing, repair requests, and consumer complaints at or immediately after Apple began selling the Watches.

53. When Plaintiff and Class members have visited Apple Stores and/or contacted Apple Support to complain about the Defect, Apple has concealed the true nature of the Defect by failing to acknowledge the Defect, failing to make free repairs under its Limited Warranty, and insisting that the Defect is merely the result of Plaintiff's and the Class's carelessness.

54. Apple has not recalled the Watches to repair the Defect and has not offered its customers a suitable repair or replacement free of charge. Indeed, Apple's conduct to this point gives every indication that its internal policy is to deny the existence of a Defect and to instead claim the Defect is the result of "accidental damage" caused by the consumer, and thus not covered by its Limited Warranty.

55. As a result of the issues caused by the Defect during foreseeable normal use, owners of the Watches are unable to use them as they were intended and expected to be used.

56. A reasonable consumer expects and assumes that, when he/she purchases an Apple Watch purportedly designed for active wear and use, the Watch screen will not spontaneously crack, detach, or shatter when it is being used within its normal and/or expected range of operation.

57. In addition to repair or replacement costs associated with remedying the Defect, Apple has a duty to disclose the defective nature of the Watches because Apple has exclusive knowledge of or access to all of the material information and has known these facts were not reasonably discoverable by Plaintiff or the Class members, and because Apple has actively concealed the Defect from its consumers.

CLASS ACTION ALLEGATIONS

58. Plaintiff requests this Court certify the following Class under Rule 23 of the Federal Rules of Civil Procedure:

All current and former consumer owners of all models and sizes of First Generation, Series 1, Series 2, and Series 3 Apple Watches purchased in the United States.

59. Alternatively, Plaintiff requests this Court certify the following Class under Rule 23 of the Federal Rules of Civil Procedure:

All residents of Colorado who are current and former consumer owners of all models and sizes of First Generation, Series 1, Series 2, and Series 3 Apple Watches purchased in the United States.

60. Plaintiff reserves the right to amend these Class definitions and, if deemed appropriate, to divide the class into additional subclasses.

61. This action is brought and may properly be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

a. **Numerosity:** The potential members of the class as defined are so numerous that joinder of all the Class members is impracticable.

b. **Commonality:** There are questions of law and fact common to Plaintiff and the Class that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, but are not limited to:

i. Whether the Defect exists;

ii. Whether and when Apple became aware of the Defect;

iii. Whether Apple sold the Watches knowing of the Defect;

iv. Whether a reasonable consumer would consider the Defect and/or its consequences to be material;

v. Whether Apple concealed the nature of the Defect in the Watches from Plaintiff and members of the Class;

- 1 vi. Whether Apple had and applied an internal policy of refusing to honor
2 the Limited Warranty on the grounds that the Defect did not exist and
3 that Plaintiff and members of the Class caused the damage to their
4 Watches;
- 5 vii. Whether Apple's conduct violated the Unfair Competition Law,
6 California Business & Professions Code §§ 17200, *et seq.*;
- 7 viii. Whether Apple's conduct violated the Consumer Legal Remedies Act,
8 California Civil Code §§ 1750, *et seq.*; and
- 9 ix. Whether, as a result of Apple's conduct, Plaintiff and members of the
10 Class are entitled to damages, restitution, equitable relief, and/or other
11 damages and relief, and, if so, the amount and nature of such relief.
- 12 c. **Typicality:** Plaintiff's claims are typical of the claims of the Class. Apple's
13 common course of conduct in violation of law as alleged herein has caused
14 Plaintiff and Class members to sustain the same or similar injuries and
15 damages. Plaintiff's claims are thereby representative of and coextensive with
16 the claims of the Class.
- 17 d. **Adequacy of Representation:** Plaintiff is a member of the Class, does not
18 have any conflicts of interest with other proposed Class members, and will
19 prosecute the case vigorously on behalf of the Class. Counsel representing
20 Plaintiff is competent and experienced in litigating large class actions,
21 including those involving California Business & Professions Code §§ 17200,
22 *et seq.*, and California Civil Code §§1750, *et seq.* Plaintiff will fairly and
23 adequately represent and protect the interests of Class members.
- 24 e. **Superiority of a Class Action:** A class action is superior to other available
25 means for the fair and efficient adjudication of this controversy. Individual
26 joinder of all Class members is not practicable, and questions of law and fact
27 common to the Class predominate over any questions affecting only individual
28 members of the Class. Each Class member has been damaged and is entitled
to recovery by reason of Apple's improper practices. Class action treatment
will allow those similarly situated persons to litigate their claims in the manner

that is most efficient and economical for the parties and the judicial system.

The injury suffered by each Class member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions economically feasible. Individualized litigation increases the delay and expense to all parties and the Court. By contrast, class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

62. In the alternative, the Class may be certified because the prosecution of separate actions by the individual Class members would create a risk of inconsistent or varying adjudication and, in turn, would establish incompatible standards of conduct for Apple.

63. The nature of notice to the proposed Class is contemplated to be by direct mail upon certification of the Class or, if such notice is not practicable, by the best notice practicable under the circumstances, including email, publication in major newspapers, and/or on the Internet.

CAUSES OF ACTION

COUNT I – UNLAWFUL BUSINESS ACTS AND PRACTICES IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.* (UCL) On Behalf of the Nationwide Class

64. Plaintiff incorporates by reference all paragraphs of the Complaint as if fully set forth herein.

65. Apple's business practices, as alleged above, constitute unlawful, unfair, and fraudulent business practices in violation of California Business & Professions Code §§ 17200, *et seq.*

66. Plaintiff and the Class reasonably expected that their Watches would not be defective such that the screens would detach, crack, or shatter unexpectedly during normal use.

67. Apple knew that the Watches were defective and were not suitable for their intended and/or expected use.

1 68. By failing to disclose the Defect present in the Watches and by failing to disclose
2 the repair or replacement costs stemming from its policy of insisting the Defect is not covered by
3 its Limited Warranty, Apple has knowingly and intentionally concealed material facts and
4 breached its duty not to do so.

5 69. Apple's unfair or deceptive acts or practices occurred repeatedly in Apple's trade
6 or business, and were capable of deceiving a substantial portion of the purchasing public.

7 70. The injury to consumers by this conduct greatly outweighs any alleged
8 countervailing benefit to consumers or competition under all of the circumstances.

9 71. As a direct and proximate result of Apple's unfair and deceptive practices, Plaintiff
10 and the Class have suffered and will continue to suffer actual damages.

11 72. Apple maintains its headquarters and principal place of business in California. The
12 unfair, unlawful, and fraudulent conduct detailed herein emanates from Apple's California
13 headquarters.

14 73. Because Apple violated California Business & Professions Code §§ 17200, *et seq.*,
15 Plaintiff and the Class should be made whole for the amounts they paid for repair, replacement,
16 and lost use of the Watches.

17 74. Plaintiff, on behalf of himself and the Class, seeks an Order of the Court awarding
18 restitution, disgorgement, injunctive and all other relief allowed under California Business &
19 Professions Code §§ 17200, *et seq.*

20 **COUNT II – VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT,**
21 **CAL. CIV. CODE §§ 1750, *ET SEQ.***
22 **On Behalf of the Nationwide Class**

23 75. Plaintiff incorporates by reference all paragraphs of the Complaint as if fully set
24 forth herein.

25 76. This claim arises under the CLRA.

26 77. At all relevant times, Plaintiff and Class members were "consumers" as defined in
27 Cal. Civ. Code § 1761(d).

78. At all relevant times, Apple’s Watches constituted “goods” as defined in Cal. Civ. Code § 1761(a).

79. At all relevant times, Apple constituted a “person” as defined in Cal. Civ. Code § 1761(c).

80. At all relevant times, Apple provided “services” to Plaintiff and the Class within the meaning of Cal. Civ. Code § 1761(b).

81. In relevant part, subsection (a) of the CLRA provides that “[t]he following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful: . . . (5) Representing that goods . . . have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have; . . . (7) Representing that goods . . . are of a particular standard, quality or grade . . . if they are of another; . . . (9) Advertising goods . . . with intent not to sell them as advertised; . . . (14) Representing that a transaction confers or involves rights, remedies, or obligations that it does not have; . . . (16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not; and . . . (19) Inserting an unconscionable provision in the contract.” Cal. Civ. Code § 1770(a)(5), (7), (9), (14), (16), (19).

82. Despite its knowledge of the Defect, Apple failed to disclose and has concealed the Defect from consumers, including Plaintiff and members of the Class. Apple further failed to disclose that it would refuse to remedy the Defect under its Limited Warranty. The omission was and is material, as Plaintiff and Class members would not have purchased—or would have paid less for—the Watches had they known of the Defect.

83. Apple’s unfair and deceptive acts or practices occurred repeatedly in its trade or business and were capable of deceiving a substantial portion of the purchasing public.

84. Apple knew that the Watches were defective and were not suitable for their intended use.

1 85. Apple was under a duty to Plaintiff and the Class to disclose the defective nature
2 of the Watches and associated repair or replacement costs because:

- 3 a. Apple had exclusive knowledge of, or was in a superior position to know, the true
4 state of facts about the Defect in the Watches;
- 5 b. Plaintiff and the Class members could not reasonably have been expected to learn
6 or discover that the Watches contained the Defect until the Defect manifested itself
7 during normal use of the Watch; and
- 8 c. Apple knew that Plaintiff and the Class members could not reasonably have been
9 expected to learn about or discover the Defect, especially given Apple's refusal to
10 acknowledge the Defect and insistence that the Defect was the fault of consumers.

11 86. By failing to disclose the defective nature of the Watches, as well as the repair and
12 replacement costs resulting from its refusal to remedy the Defect under its Limited Warranty,
13 Apple has knowingly and intentionally concealed material facts and breached its duty not to do
14 so.

15 87. The undisclosed facts about the Defect would be material to the reasonable
16 consumer and are facts that a reasonable consumer would consider important in deciding whether
17 to purchase a Watch and how much to pay for it. Owning a Watch with the Defect materially
18 changes the manner in which the Watch can be used and enjoyed, resulting in the inability of
19 Plaintiff and Class members to use the Watches in a manner consistent with their intended and
20 regular purpose and usage.

21 88. Had Plaintiff and the Class known about the defective nature of the Watches and/or
22 the costs they would accrue as a result of Apple's refusal to honor its Limited Warranty, they
23 would not have purchased the Watches, or would have paid less for them.

24 89. Plaintiff and Class members are consumers under Cal. Civ. Code § 1761(d). Cal.
25 Civ. Code § 1780(a)(2) permits any court of competent jurisdiction to enjoin the practices that
26 violate Cal. Civ. Code § 1770.

27 90. Plaintiff and Class members are entitled to recover actual or statutory
28 compensatory/monetary damages as authorized by Cal. Civ. Code § 1780(a)(1) and Cal. Civ.
Code § 1781(a)(1), restitution as authorized under Cal. Civ. Code § 1780(a)(3), and punitive

1 damages as authorized by Cal. Civ. Code § 1780(a)(4), all of which are appropriate here because
 2 of Apple's knowing, intentional, malicious, fraudulent, and unconscionable conduct, Apple's
 3 reckless disregard of its legal obligations to Plaintiff and Class members, and/or as otherwise
 4 recoverable under Cal. Civ. Code § 1780(a)(4).

5 91. Plaintiff and Class members are also entitled to recover attorneys' fees and costs
 6 under Cal. Civ. Code §§ 1780 and 1781.

7 92. As required by Cal. Civ. Code § 1782(a), Plaintiff provided 30-day notice to Apple
 8 before filing this Complaint under Cal. Civ. Code § 1782(d). Following receipt of the notice,
 9 Apple refused to provide the requested remedies to the Class.

10 **COUNT III – BREACH OF EXPRESS WARRANTY**
 11 **On Behalf of the Nationwide Class and Colorado Subclass**

12 93. Plaintiff incorporates by reference all paragraphs of the Complaint as if fully set
 13 forth herein.

14 94. Apple provided a one-year written Limited Warranty to consumers in connection
 15 with every sale of an Apple Watch (this warranty period is two years for Hermès and Edition
 16 models). Under the terms of the Limited Warranty, Apple warranted “against defects in materials
 17 and workmanship” in the Apple Watch “when used normally in accordance with Apple’s
 18 published guidelines for a period of ONE (1) YEAR from the date of original retail purchase by
 19 the end-user purchaser. . . .”

20 95. Apple’s Limited Warranty provides that if the warranty is triggered during the
 21 warranty period, Apple will either: “(i) repair the Apple Product using new or previously used
 22 parts that are equivalent to new in performance and reliability, (ii) replace the Apple Product with
 23 the same model (or with your consent a product that has similar functionality) formed from new
 24 and/or previously used parts that are equivalent to new in performance and reliability, or (iii)
 25 exchange the Apple Product for a refund of your purchase price.”¹⁴

26 96. Notwithstanding the Limited Warranty, Plaintiff and the Class’s Watches were
 27 defective at the time of sale. The defect is inherent to the Watches and gives the Watches a

28 ¹⁴ <https://www.apple.com/legal/warranty/products/warranty-us.html>.

substantial propensity to fail—rendering the Watches unsuitable for their primary purpose—and existed at all relevant times.

97. The Limited Warranty was included with every Watch and was also made available on Apple’s website.

98. Plaintiff and Class members used their Watches in a manner consistent with the operating instructions prior to manifestation of the Defect.

99. Apple was on actual notice of the Defect before selling the Watches to Plaintiff and Class members and received timely notice of the breaches they experienced. Despite reasonable opportunities to honor the promises in its express warranty, Apple failed to furnish an effective remedy to Plaintiff and Class members.

100. Apple’s failure to provide Plaintiff and Class members with a non-defective replacement device, an effective repair, or a refund of their purchase price breached its obligations under the warranty.

101. As a direct and proximate result of Apple’s breaches of express warranty, Plaintiff and Class members have been damaged in an amount to be proven at trial.

COUNT IV – BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
On Behalf of the Nationwide Class and Colorado Subclass

102. Plaintiff incorporates by reference all paragraphs of the Complaint as if fully set forth herein.

103. By operation of law, Apple—as a manufacturer of the Apple Watch and as an offeror of the Limited Warranty—impliedly warranted to Plaintiff and Class members that the Watches they were purchasing were of merchantable quality and fit for their ordinary and intended use as durable activity-tracking, smart-watch devices. The Watches were not, however, fit for their ordinary and intended use because the Watches suffer from the Defect described herein.

104. Consumers who did not purchase their Watches directly from Apple are the intended third-party beneficiaries of the written distribution and supply agreements between Apple and its authorized resellers (i.e., Amazon, Best Buy, Walmart), and of the implied

1 warranties that attach to those contracts. The retailer sellers were not intended to be the ultimate
2 users of the Watches.

3 105. Consumers who did not purchase their Watches directly from Apple are also the
4 intended beneficiaries of the Limited Warranty that Apple provided to its authorized sellers with
5 the Watches.

6 106. Apple impliedly warranted that the Watches were of merchantable quality and fit
7 for such use. This implied warranty included, among other things, a warranty that the Watches
8 and their screens were manufactured, supplied, distributed, and/or sold by Apple, were reliable,
9 and would not experience premature failure when used in a reasonable and foreseeable manner
10 by consumers.

11 107. Apple breached the implied warranty of merchantability in connection with its sale
12 and distribution of the Watches. At the point of sale, the Watches—while appearing normal—
13 contained the Defect rendering the Watches defective and unfit for their ordinary and intended
14 purpose. The Watches were defective when they left Apple's possession and were failure-prone
15 at the point of sale.

16 108. Had Plaintiff and Class members known that the Watches were defective, they
17 would not have purchased them, or would have paid less for them.

18 109. Plaintiff and Class members furnished Apple with an opportunity to cure its breach
19 of warranty, and otherwise complied with any and all obligations under the implied warranty of
20 merchantability. Despite knowing the Watches were defective prior to, or concurrent with, their
21 release, Apple has refused to provide Plaintiff and Class members with appropriate warranty
22 relief, leaving them without the functional product they reasonably expected in making their
23 purchasing decisions.

24 110. Apple's actions, as complained of herein, breached the implied warranty of
25 merchantability and, as a result, Plaintiff and Class members have sustained damages in an
26 amount to be determined at trial.

27 **COUNT V – MAGNUSON-MOSS WARRANTY ACT**
28 **On Behalf of the Nationwide Class and Colorado Subclass**

1 111. Plaintiff incorporates by reference all paragraphs of the Complaint as if fully set
2 forth herein.

3 112. The Watches are “consumer products” as that term is defined by 15 U.S.C. §
4 2301(1).

5 113. Plaintiff and the Class members are “consumers” as that term is defined by 15
6 U.S.C. § 2301(3).

7 114. Apple is a “supplier” as that term is defined by 15 U.S.C. § 2301(4).

8 115. Apple is a “warrantor” as that term is defined by 15 U.S.C. § 2301(5).

9 116. Apple provided Plaintiff and Class members with “written warranties” as that term
10 is defined by 15 U.S.C. § 2301(6).

11 117. Section 15 U.S.C. § 2310(d)(1) provides that a consumer who is damaged by the
12 failure of the supplier, warrantor, or service contractor to comply with any obligation under this
13 title, or a written warranty, implied warranty, or service contract, may bring suit for damages and
14 other legal and equitable relief in any court of competent jurisdiction in any state.

15 118. When Plaintiff and the Class members purchased their Watches, Apple expressly
16 warranted that it would cover repairs arising out of defects in materials and workmanship, as well
17 as manufacture, without cost to the consumer for one year after purchase.

18 119. Apple breached the express warranty because the Defect at issue was present in
19 the Watches at the time of sale, Apple knew that the Defect was present, and Apple did not
20 disclose or repair the Defect prior to each sale.

21 120. Apple also breached the warranty (and continues to breach the warranty) because
22 it wrongfully, uniformly, and repeatedly refuses to cover the Defect under the warranty, forcing
23 Plaintiff and members of the Class to cover the costly repairs themselves.

24 121. Even if Apple covered these repairs under the warranty, the warranty would fail
25 its essential purpose because Apple merely replaces defective parts with equally defective parts
26 containing the same Defect.

1 122. Plaintiff used his Watch in a manner consistent with its intended use and
2 performed each and every duty required under the terms of the Limited Warranty, including
3 presentment, except as may have been excused or prevented by Apple's conduct or by operation
4 of law in light of Apple's unconscionable conduct described throughout this Complaint.

5 123. In its capacity as a supplier and/or warrantor, and by the conduct described herein,
6 any attempt by Apple to disclaim or otherwise limit its express warranties in a manner that would
7 exclude or limit coverage for the Defect that was present as of the time of sale, which Apple knew
8 about through testing, repair requests, and consumer complaints at or immediately after Apple
9 began selling the Watches, is unconscionable, and any such effort to disclaim or otherwise limit
10 liability or warranty coverage for the Defect at issue is null and void.

11 124. All jurisdictional prerequisites have been satisfied.

12 125. Accordingly, Plaintiff and the Class members suffered damages caused by Apple's
13 breach of express warranties and are entitled to recover damages, including, but not limited to,
14 diminution of value, equitable relief, and attorneys' fees and costs pursuant to 15 U.S.C. § 2310.
15
16

17 **COUNT VI – UNJUST ENRICHMENT**
18 **On Behalf of the Colorado Subclass**

19 126. Plaintiff incorporates by reference all paragraphs of the Complaint as if fully set
20 forth herein.

21 127. Plaintiff and the Class members conferred a benefit on Apple by purchasing the
22 Watches.

23 128. Apple had knowledge that this benefit was conferred upon it.

24 129. Because of its wrongful acts and omissions, Apple charged a higher price for the
25 Watches than the Watches' true value and Apple obtained money which rightfully belongs to
26 Plaintiff and the Class.

27 130. Apple has been unjustly enriched at the expense of Plaintiff and the Class, and its
28 retention of this benefit under the circumstances would be inequitable.

131. Plaintiff and the Class seek an order requiring Apple to make restitution to them.

JURY DEMAND

132. Plaintiff demands trial by jury as to all issues so triable.

PRAYER FOR RELIEF

FOR THE FOREGOING REASONS, Plaintiff, individually and on behalf of the Class, respectfully requests that the Court certify this action as a Class action, with Plaintiff as Class representative and the undersigned counsel as class counsel, and enter an Order of judgment against Apple in favor of the class that:

- a. Awards actual damages to Plaintiff and the Class to fully compensate them for losses sustained as a direct, proximate, and/or producing cause of Apple's unlawful conduct;
- b. Awards restitution and disgorgement of all monies Apple derived from Plaintiff and Class members through the misconduct alleged above;
- c. Awards pre-judgment and post-judgment interest at the maximum allowable rates;
- d. Awards reasonable attorneys' fees and costs;
- e. Temporarily and permanently enjoins Apple from engaging in the unlawful practices alleged herein; and
- f. Orders any such other and further relief as the Court deems just and proper to correct the wrongs done to the class.

Dated: June 4, 2018

Respectfully submitted,

By: /s/ Kolin C. Tang

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